STATE OF MICHIGAN

COURT OF APPEALS

In re S. MURPHY, Minor.

UNPUBLISHED
October 16, 2014

No. 321678
Lake Circuit Court
Family Division
LC No. 13-001515-NA

Before: BORRELLO, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor child S.M. pursuant to MCL 712A.19(b)(3)(c)(*i*) (conditions leading to adjudication continue beyond 182 days) and (3)(j) (reasonable likelihood that the child will be harmed if returned to parent's home). Because the trial court did not clearly err in finding statutory grounds for termination and that termination was in the child's best interests, we affirm.

The minor child's two-year-old stepbrother, B.M., was treated by hospital staff for "linear marks, and abrasions to the left side of this face/ear, a long scratch on his abdomen, and red marks on his buttocks." The mother of the children told hospital staff and Michigan State Police personnel that the linear bruising was caused by respondent slapping the child.[1] She said that the day before, respondent had placed the child in a bathtub and sprayed him with cold water as a form of punishment. She also reported that she had witnessed respondent striking the two-year-old on the back of the head. She said that respondent had hit her on more than one occasion, and that he yelled at S.M. when the child was five months old in an effort to make him stop crying. The court granted petitioner's request to remove the two children from their home. Both children tested positive for cocaine at the time of their removal. The children's mother and respondent pleaded no contest at the adjudication hearing and the court took jurisdiction over the children on March 13, 2013.

The barriers to respondent's reunification with S.M. were identified as drug abuse, violence, homelessness, and unemployment. Respondent attended one of the three dispositional

[1] With respect to his treatment of B.M., respondent pleaded guilty to third-degree child abuse and, as a third-offense habitual offender, was given a one-year sentence, 60 days of which were to be served in the county jail, the rest on probation.

hearings that followed. At the first hearing, a psychological assessment, substance abuse assessments, and mandatory drug screens were recommended for respondent. Petitioner also recommended that respondent continue his current participation in a "Parents as Teachers" program and reported that he had made an appointment at Family Health Care for outpatient counseling to address the issue of domestic violence.

Every drug screen respondent took prior to his incarceration in June 2013 tested positive and he was terminated from a "Parents as Teachers" program for non-participation. During one of the sessions he did attend, a parent-teacher asked how he intended to support S.M., and respondent reportedly replied that he was planning to sue Meijer Corporation for a snake bite he said he incurred in the produce section of one of their stores, and that he was applying for Social Security benefits because he felt as if he could no longer work due to the snake bite. There is no record evidence that respondent was employed prior to his incarceration or that he sought housing or housing assistance for himself and the minor child.

Following his release from jail in August 2013, respondent obtained a full-time job. However, he was let go approximately two months into his employment. He was homeless until he moved in with his girlfriend and her father in October 2013. After his August release, respondent signed a placement agreement promising to participate in one supervised parenting time session per week as a condition for allowing respondent's mother to supervise the second parenting time session. Respondent attended six of 11 scheduled supervised parenting times and was observed to be affectionate and interactive with S.M., playing with him on the floor, trying to get him to talk, and encouraging him to read books. However, respondent and respondent's mother frequently violated this agreement by continuing parenting time at her home while skipping the supervised parenting time sessions.

In November 2013, respondent was terminated from another parenting program for non-participation and he stopped communicating with his case manager. During the same month, he was discovered by a probation officer smoking marijuana on his girlfriend's couch and told to contact his regular probation officer. When he failed to do so, a warrant was issued for his arrest. Respondent was arrested in January 2014 and sentenced in February to a year and a day in prison.

Respondent attended the February 2014 permanency planning hearing telephonically. After describing respondent's lack of progress toward reunification and the services offered, petitioner asked the court to permit the filing of a petition for the termination of respondent's parental rights. The court granted the request and a supplemental petition seeking termination of respondent's parental rights was filed in March 2014. A termination hearing was held in April 2014. Finding clear and convincing evidence of a statutory ground for termination, and determining by a preponderance of the evidence that termination was in the best interests of S.M., the court terminated respondent's parental rights.

Respondent argues first that termination under MCL 712A.19b(3)(c)(*i*) and (3)(j) was not supported by clear and convincing evidence. We review a trial court's findings that a statutory ground for termination has been established for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was

made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Only one statutory ground is required for termination. *In re Powers Minor*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

The record submitted on appeal shows that the circumstances that led to S.M.'s removal persisted during the 14 months after removal and that there was no reasonable likelihood that they would be rectified within a reasonable period of time, given the child's age. MCL 712A.19b(3)(c)(*i*). Although respondent attributes his unemployment and lack of housing to petitioner's placement of S.M. at his mother's house, respondent reported himself homeless and unemployed at least as early as April 2013, months prior to the placement. Nothing in the record suggests that respondent made an effort to find housing for himself and the child. Although he said he "made a living" at his parents' resort, neither respondent nor his mother claimed, prior to this appeal, that he had a full-time, stable job there. Respondent insists that with more services and more time, he could eliminate the barriers to reunification and become an appropriate parent. However, respondent failed to participate in the services he was offered. If he could not afford them or did not have transportation, he failed to communicate this to his caseworker. There is also no record evidence that he sought free community services, such as Narcotics Anonymous.

Given respondent's minimal efforts to eliminate the barriers that lead to the removal of the child, we conclude that the trial court did not clearly err by finding clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*).

Regarding MCL 712A.19b(3)(j), "how a parent treats one child is certainly probative of how that parent may treat other children." *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). Here, respondent pleaded guilty to third-degree child abuse with regard to his treatment of B.M. In addition, both B.M. and S.M. tested positive for cocaine at the time of their removal from respondent's home, a fact which S.M.'s mother surmised resulted from inhaling second-hand smoke when respondent smoked crack cocaine.

Given the record in this case and the trial court's special opportunity to have observed respondent over time and to judge the credibility of the witnesses at the hearing on petitioner's supplemental petition to terminate respondent's parental rights, MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), we conclude that the trial court did not clearly err by finding that clear and convincing evidence existed to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(j).

Respondent next argues that termination of his parental rights was not in the best interests of the child. We review the trial court's findings regarding a child's best interests for clear error. MCR 3.977(K); *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). When making its best-interest determination, the court must consider whether the record as a whole proves by a preponderance of the evidence that termination is in the best interests of the child. *In re Moss*, 301 Mich App at 83.

At the time of the termination hearing, S.M. had been a ward of the court for approximately 75 percent of his short life. S.M. was removed when he was five months old,

placed with one caregiver for approximately six months and with another for approximately nine months. During the same period of time, respondent was unemployed for all but two months and consistently without stable housing. Although he claimed he made "a living" at his parents' resort, no evidence was presented that he was regularly employed there. He continued to use drugs, even while in jail. Respondent's notion that he would support his son with proceeds from a proposed snake-bite lawsuit against Meijer reflects his lack of real initiative to overcome the persistent barriers to reunification with his son. There were no family members who were willing to adopt S.M. Accordingly, the trial court did not clearly err by finding, by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Stephen L. Borrello
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro